

'Mini-Court' Endorsed By Bickel

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Constitutional law expert Alexander M. Bickel yesterday endorsed a proposal to create a "mini-court" to screen the flood of appeals burdening the Supreme Court and took a polite swipe at Justice William O. Douglas.

Bickel, a Yale law professor, came out in favor of a new national court of appeals in a pamphlet published by the non-profit American Enterprise Institute for Public Policy Research.

A special study group headed by Harvard Prof. Paul Freund originally recommended that the new "mini-court" be made up of a rotating panel of federal appeals judges who would preview and weed out the more than 4,500 petitions for a hearing filed with the Supreme Court each term.

Douglas, 75, a veteran of 34 years on the high court, is the only justice who has opposed the proposal. He contended that the nine justices are underworked rather than overworked.

Bickel called Douglas' view

"singular," adding, "Decision for him is quite apparently a series of high-speed, high-volume events, not the process that the study group described and sought to foster."

"The issue, as drawn by Justice Douglas, is clear. If the task of decision is more an individual administrative or executive event than a collective scholarly and deliberative process, if in another sense of the word the court can 'process' cases after the fashion of a high-speed, high-volume enterprise, if all that counts is 'the bottom line,' and if a day spent in deep constitutional contemplation is a day partly wasted, then Justice Douglas is plainly right and there is no problem."

Of the "mini-court," which would decide which cases the Supreme Court should consider, Bickel said: "... the machinery of justice, if that is what it should be called, creaks. If we should let it reach the point of breakdown or, taking the term 'machinery' seriously, let it transform itself into a high-speed, high-volume enterprise, we would mock the idea of justice and mock the substantive reforms of a generation."

The creation of a national court of appeals would not be a perfect solution, Bickel conceded.

"The reasonable question is a relative, not an absolute one, informed by the sensible attitude of the farmer who, when asked how he liked his wife, said 'compared to what?'"